

Saudi Arabian Government Actions to Help Private Sector Employers Affected by COVID-19: Discussion & Key Take-Aways

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Background – Saudi Labor Law

- **Saudi Labor Law** (Royal Decree No. M/51 dated 27 September 2005) governs employment relations in the private sector
 - Does not cover
 - Domestic Servants
 - Agricultural Workers
 - Maritime / Fisheries Workers on small vessels (< 500 Tons)
 - Workers on Temporary Work Contracts (\leq 2 Months duration)
- **Implementing Regulations** (Ministerial Resolution No. 1982 dated 6 April 2016) provide supplemental guidance on key provisions in the **Saudi Labor Law**

Background – GOSI & Unemployment Scheme

- **Social Insurance (GOSI) Law** (Royal Decree No. M/22 dated 15 November 1969)
 - Created private sector pension scheme (for Saudi nationals only)
 - Workers' Compensation scheme (for ALL employees)
- **Unemployment Scheme (SANAD)** – Created by Royal Decree No. 18 dated 13 January 2014
 - For Saudi nationals only
 - 2% of Basic Salary, contributed 1% each by Employer & Employee
- **Order No. 81 of 2014 on Unemployment Insurance**
 - Provides for payment of up to 60% of salary for unemployed Saudi worker for 1st 3 months and 50% of salary for next 9 months

COVID-19 Pandemic

- **Novelcorona Virus** causes severe respiratory problems and other health issues, including death (**COVID-19 disease**)
- **Novelcorona Virus** contagion and **COVID-19** disease first reported in Wuhan, China on **31 December 2019**
- **COVID-19** spread in **January & February 2020** in Asia, Iran & Italy, with World Health Organization (**WHO**) declaring it a "**Public Health Emergency of International Concern**" on **31 January 2020**
- 1st **COVID-19** case reported in **Saudi Arabia** on **2 March 2020**
- **WHO** Dir.-Gen. declared **COVID-19** a "**pandemic**" on **12 March 2020**
- **Saudi Arabia** began imposing restrictions on public gatherings and ordered government employees to **Work From Home (WFH)**, etc. on **16 March 2020**, implemented WFH order for the private sector on **18 March 2010** and imposed curfews in many cities on **6 April 2020**

3 April 2020 Actions

- **Saudi Arabian Government** announced that Employers could place Saudi national workers on unemployment under **SANAD** scheme, with GOSI to pay **60%** of salaries (up to **SAR 9,000 / month**) in **May, June** and **July 2020**, subject to these conditions:
 - **≤ 70%** of **Saudi** national workforce (But **100%** if **≤ 5 Saudi** Employees)
 - Employee must have been registered with **GOSI** before **1 January 2020**
 - Employer must have paid all workers' salaries and made full **GOSI** contributions for **Q1 2020**
 - Employer must pay all other workers (Saudi & foreigner) their full salaries for these 3 months
 - Employer must restore Saudi workers placed on SANAD to with full pay from **1 August 2020**
 - Certain sectors are excluded from this program:
 - **Financial Services** (Banks, Insurance Companies, Exchanges)
 - **Communications** service providers
 - **Food Companies** including retail food outlets

New Article 41 to Implementing Regulations

- **New Article 41** introduced on **6 April 2020** to govern contractual relationship between Employers & Employees in light of curfews and other restrictions imposed by Saudi Arabian Government to combat **COVID-19**.
- **Article 41 (1)** provides Employers with 3 options to be discussed and agreed with Employees to address economic hardships due to **COVID-19**:
 - **Salary Reduction** - Commensurate with reduction in working hours
 - **Mandatory Annual Leave** – Employer can place Employee on Annual Leave
 - **Exceptional Unpaid Leave** – Employer can place Employee on *unpaid* leave under **Article 116** of **Labor Law**
 - Mutually agreed leave of absence

New Article 41 to Implementing Regulations cont.

- **Article 41 (2)** provides that termination of the Employee shall be deemed *“illegitimate”* if the Employer has availed of any government programs / support to address **COVID-19** pandemic
 - Employee wrongfully terminated would be eligible for compensation under **Article 77** of **Labor Law** for *“unjust dismissal”*
- **Article 41 (3)** provides that the **Employee** may terminate the contract in response to the COVID-19 pandemic notwithstanding the provisions in **Article 41**

Explanatory Memo – 3 May 2020

- **Ministry of Human Resources & Social Development** (“**Ministry**”) issued an **Explanatory Memorandum** (the “**Memo**”) on **3 May 2020** to provide clarity on implementation of **New Art. 41**:
- **Article 41 (1) –**
 - **Reduction in Working Hours**
 - Limited to maximum duration of **6 Months**
 - Reduction shall not exceed **40%** of “**actual wage**” and cannot be refused by the Employee
 - Salary reduction commensurate with reduction in working hours

Explanatory Memo – 3 May 2020 cont.

- **Article 41 (1)** continued
 - **Annual Leave**
 - Employer may **require** Employee to take **Annual Leave** and set the days of Annual Leave, subject to the following conditions:
 - Annual Leave to be paid per **Article 109** of the **Labor Law**
 - **Annual Leave dates must be within 6 Months** from commencement of **COVID-19** actions by Saudi Arabian Government
 - Annual Leave payment based on **full salary**, not reduced salary
 - **Exceptional Leave**
 - Employer can **require** Employee to take “**exceptional leave**” (furlough) subject to the following conditions:
 - Employee must **consent** to the “**exceptional leave**”
 - Employment term to be suspended under **Article 116** of the **Labor Law** if **>20 days** unless Employer and Employee agree otherwise
 - Can only be done **within 6 Months** from commencement of **COVID-19** actions by Saudi Arabian Government

Explanatory Memo – 3 May 2020 cont.

- **Article 41 (2)**

- **Termination by Employer for *Force Majeure***

- Employer may terminate the employment relationship for ***force majeure*** under **Article 74(5)** of the **Labor Law** if – and only if – the following occur:
 - The extraordinary circumstances persist for a period of **>6 Months** within **6 Months** from commencement of **COVID-19** actions by the KSA Government
 - Options under **Article 41 (1)** have been exhausted in whole or in part
 - Employer has availed of no other government programs
 - » This includes placement of Saudi national workers onto **SANAD** unemployment scheme for **May, June & July 2020**
 - Termination under **Article 41 (2)** not deemed “for cause” per **Article 80** of the Labor Law and Employee would be entitled to all benefits including **End of Service Gratuity**

Explanatory Memo – 3 May 2020 cont.

- **Article 41 (3)**

- **Termination by Employee for *Force Majeure***

- Employee may terminate the employment relationship for ***force majeure*** under **Article 74(5)** of the **Labor Law** if – and only if – the following occur:
 - The extraordinary circumstances persist for a period of **>6 Months** within **6 Months** from commencement of **COVID-19** actions by the KSA Government
 - Options under **Article 41 (1)** have been exhausted in whole or in part
 - Termination by Employee under **Article 41 (3)** not deemed “for cause” per **Article 80** of the Labor Law and Employee would be entitled to all benefits including **End of Service Gratuity**

- **Fines & Penalties**

- **Ministry** may impose fines on Employers that violate **Article 41**
 - **SAR 10,000** / violation per Employee
 - **Ministry** may settle fines if (i) violations have been addressed and (ii) Employer has complied with terms of settlement agreed with Ministry

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